Abdul Aziz bin Jamal Mohammad & Ors v Maniam KVS @ M Kayveas

HIGH COURT (MELAKA) — SUIT NO 22-14 OF 1998
SURIYADI J
13 MARCH 1998

Unincorporated Associations *— Societies — Political party — Jurisdiction of court to interfere with decision of political party — Application for injunction to prevent defendant from claiming to be a member of a political party — Whether court has jurisdiction to hear application in view of provision of s 18C of the Societies Act 1966*

Civil Procedure *— Jurisdiction — Decision of political party — Application to prevent defendant from claiming to be member of political party — Whether court has jurisdiction to hear application in view of provision of s 18C of the Societies Act 1966*

The plaintiffs applied, inter alia, for an injunction restraining the defendant and his Central Executive Committee of the People's Progressive Party ('the party') members from holding out and claiming to be members of the party. The defendant applied to strike out the plaintiffs' claim under O 18 r 19 of the Rules of the High Court 1980. At the direction of the learned judge and the concurrence of both counsel, the parties confined their submission to the issues of law raised by s 18C of the Societies Act 1966 ('the Act') which in effect would 'oust' the court from proceeding and to hear the application. The defendant submitted that prior to this hearing, there were four other similar suits filed in the High Court of Muar and Seremban wherein it was held that the High Court has no jurisdiction to entertain any application which questioned the decision of a political party or its office bearers relating to the affairs of the party. The defendant further submitted that the Court of Appeal had approved one of the aforesaid decisions which went on appeal to the Court of Appeal. Counsel for the plaintiff relied on an earlier High Court decision where it was held that the court could not interfere with a decision by reason of an ouster clause only if the decision was reached according to the law. Otherwise, the court can interfere in a decision not made according to the law on the basis that an illegal decision was no decision at all.

Held, dismissing both applications:

Section 18C of the Act — which provided in effect that the decision on any matter relating to the affairs of the party shall be final and shall not be challenged in any court on any ground relating to the validity of such decision — was very clear and unambiguous and brooked no other interpretation. In view of that, there was no merit in the suggestion that invalid decisions do not come within the purview of s 18C whilst good ones do (see p 800F–G).

Per curiam:

Section 18C cannot be read in isolation as, if courts were prevented from interfering then unhappy members will be left without any remedy or forum to air their grievances. Sections 16 and 40 of the Act may be of assistance as the Registrar of Societies had been empowered to take over the role of an arbitrator as and when the need arises. He is armed with the powers to look into a dispute and thereafter take the necessary steps and consequential decisions after having considered all evidence necessary to resolve the dispute in question. At this stage, the court may play a role and circumvent s 18C by way of administrative law on the basis that the decision was now pursuant to a decision from a local tribunal and not a political one (see p 800D–E).

[Bahasa Malaysia summary

Plaintif-plaintif memohon, antara lain, untuk suatu injunksi menghalang defendan dan ahli Jawatankuasa Eksekutif Parti Progresif Rakyat ('parti tersebut') daripada mengemukakan diri dan mendakwa sebagai ahli-ahli parti tersebut. Defendan memohon supaya tuntutan plaintif-plaintif dibatalkan di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980. Atas arahan hakim yang bijaksana dan persetujuan bersama peguam kedua pihak, pihak-pihak terlibat menjuruskan hujah berdasarkan isu undang-undang di bawah s 18C Akta Pertubuhan 1966 ('Akta tersebut') yang mana kesannya adalah untuk 'mengusir' mahkamah daripada meneruskan dan untuk mendengar permohonan. Defendan menghujahkan bahawa sebelum pembicaraan ini, terdapat empat tindakan lain yang serupa difailkan di Mahkamah Tinggi Muar dan Seremban di mana ia diputuskan bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa untuk melayan permohonan yang mempersoalkan keputusan yang diambil oleh sesuatu parti politik atau pemegang jawatannya berhubung dengan hal ehwal parti tersebut. Defendan selanjutnya berhujah bahawa Mahkamah Rayuan telah meluluskan salah satu keputusan yang disebut tadi di mana rayuan telah dibuat kepada Mahkamah Rayuan. Peguam plaintif bersandarkan kepada keputusan Mahkamah Tinggi terdahulu di mana ia diputuskan bahawa mahkamah tidak boleh mengganggu sesuatu keputusan disebabkan fasal ketakmasukan hanya jika keputusan dicapai mengikut undang-undang. Sebaliknya, mahkamah boleh mengganggu keputusan yang tidak dibuat mengikut lunas undang-undang atas alasan bahawa keputusan tidak sah tidak semata-mata menjadikannya keputusan.

Diputuskan, menolak kedua-dua permohonan:

Seksyen 18C Akta tersebut — yang memperuntukkan dengan kesan bahawa keputusan atas apa saja perkara yang berkaitan dengan hal ehwal parti tersebut adalah muktamad dan tidak boleh dicabar di mana-mana mahkamah atas apa jua alasan berkaitan dengan kesahihan

keputusan sedemikian — adalah amat jelas dan tidak mengandungi tafsiran yang bukan-bukan. Dengan ini, tiada merit dalam saranan bahawa keputusan yang tak sah tidak dirangkumi oleh skop s 18C manakala keputusan yang kukuh diliputi (lihat ms 800F–G).

Per curiam:

Seksyen 18C tidak boleh dibaca secara berasingan, kerana andainya mahkamah dihalang daripada mengganggu maka ahli-ahli yang tidak berpuas hati tidak akan mempunyai sebarang remedi atau forum untuk menyuarakan kilanan mereka. Seksyen-seksyen 16 dan 40 Akta tersebut boleh membantu kerana Pendaftar Pertubuhan telah diberi kuasa untuk mengambil alih peranan penimbangtara apabila keadaan memerlukan. Beliau diberi kuasa untuk mendalami pertikaian dan sayugia mengambil langkah-langkah perlu dan membuat keputusan yang berbangkit setelah mempertimbangkan segala keterangan yang dikehendaki bagi menyelesaikan pertikaian berkenaan. Pada peringkat ini, mahkamah boleh memainkan peranan dan memintas s 18C menerusi undang-undang pentadbiran atas dasar bahawa keputusan kini menurut keputusan daripada sebuah tribunal tempatan dan bukan tribunal politik (lihat ms 800D–E).]

Notes

For cases on societies, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1630–1702.

For cases on jurisdiction of court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2092–2255.

Cases referred to

Anisminic Ltd v Foreign Compensation Commission & Ors [1969] 2 AC 147 (refd)

Chin Choy & Ors v Collector of Stamp Duties [1979] 1 MLJ 69 (refd)

Kannan & Anor v Menteri Buruh dan Tenaga Rakyat & Ors [1974] 1 MLJ 90 (distd)

Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano [1997] 1 MLJ 94 (refd)

SI Rajah & Anor v Dato Mak Hon Kam & Ors (No 2) [1994] 1 CLJ 215 (refd)

South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Ors [1980] 2 MLJ 165 (refd)

Legislation referred to

Rules of the High Court 1980 O 18 r 19

Societies Act 1966 ss 16, 18C, 40

Manian K Marappan (*Rugber Singh & Partners*) for the plaintiffs.
M Kayveas (*Blanche Kayveas & Co*) for the defendant.

Suriyadi J: Vide encl 5, the plaintiffs applied for an injunction restraining Datuk Kayveas and his Central Executive Committee members of the People's Progressive Party from holding out and claiming to be members of the said party. Another prayer applied for was the restrainment of the defendants from convening the annual general meeting on 21 February 1998 at the Pusat Islam Kuala Lumpur but that prayer had become academic as the date had elapsed. That, in brief, was the plaintiffs' prayers in the summons in chambers application. The defendants, not to be left out, submitted a striking out application under O 18 r 19 of the Rules of the High Court 1980. Several reasons were enclosed in the applications supported by the relevant affidavits.

Before the hearing began, I thought it was only logical that both parties submit before me regarding s 18C of the Societies Act 1966 which at a glance denied me the right to hear the matter at hand. This section reads:

> The decision of a political party or any person authorized by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

They willingly obliged and accordingly submitted on the above points of law. I stated at the outset that as this was a question of jurisdiction of the court — which was totally a legal question that required merely an interpretation of the above section vis-a-vis that of the court — consideration of the facts thus would be disallowed. Parties were only to submit on the bare allegations as printed on the summons in chambers without more. The prayers on the summons in chambers at a cursory look clearly related to 'matters relating to the affairs of the party'. Whether the allegations were true or otherwise were irrelevant at this stage. It was on that premise that the parties proceeded to ventilate their views. In spite of this delineation of the rules of the submission pertaining to the preliminary matter at hand, I was painfully aware that legal submissions could not subsist in a vacuum and as a result permitted that certain background facts prior to the presentation of these applications before me be highlighted. It transpired that prior to this hearing, the defendants had been dragged to court four times before, twice each in Seremban and Muar. This was the fifth. I was also supplied with the written grounds of judgment of Mohd Noor Abdullah J pursuant to his decision in Civil Suit No 22–72–96 (High Court, Seremban) and the written grounds of judgment of Raus J, the High Court judge of Muar, pursuant to Civil Suit No 22–21 of 1997 (High Court, Muar). Both judges concluded in the same vein pertaining to the relevant section. Mohd Noor Abdullah J ventilated that:

> The relevant parts of the section may be paraphrased: the decision of a political party or any person authorized by it ... on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be ... called in question in any court on any ground, and no court shall have jurisdiction to entertain ... the validity of such question.
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> It is observed that the court has no jurisdiction to entertain an application which questions the decision of a political party or its office-bearers relating to the affairs of the party.

Raus J in his unreported grounds of judgment dated 11 August 1997 wrote:

> Seksyen 18C Akta Pertubuhan 1966 dengan jelas memperuntukkan bahawa keputusan yang dibuat oleh sesuatu parti politik itu adalah muktamad, dan keputusan itu tidak boleh dicabar, dirayukan, dikaji semula, dibatalkan atau dipersoalkan dalam mana-mana mahkamah atau atas apa-apa alasan dan mahkamah tidak mempunyai bidang kuasa untuk melayan atau memutuskan apa-apa guaman permohonan, soalan atau prosiding atau apa-apa alasan berhubung kesahihan keputusan itu.

As we went along with the hearing, the defendants revealed that one of the decisions of Mohd Noor Abdullah J had been dealt with by the Court of Appeal, a quorum which comprised Siti Norma Yaakob, Gopal Sri Ram and Ahmad Fairuz JJCA. In that decision, the Court of Appeal also held the same view as that of the High Court judge. It was unfortunate that the defendants could not supply me with the relevant written decision. Based on the undertaking of the defendants that that was the outcome, I considered the decision too. In the course of my deliberations, I was impressed by the case of *SI Rajah & Anor v Dato Mak Hon Kam & Ors (No 2)* [1994] 1 CLJ 215 where Lim Beng Choon J at p 223 said:

> Finally, I should also mention that an amendment vide Act 743/90 was made to the Societies Act 1950 by introducing Pt IA entitled 'Provisions Applicable to Political Parties Only' and the amendment came into force on 12 January 1990. The amendment has the effect of confining disputes arising from the election of disqualified persons as office bearers of a political society within the said party itself. In short, it is for the political party itself to settle such disputes. Although the amendment was made after the institution of this action and is not applicable to this action as it has not been made retrospectively nonetheless the amendment acknowledges the common sense rule adopted by the court even before the amendment was made, ie that the remedy of a politician involved in a dispute with the fellow members of his party lies not with the court but with the Registrar of Societies or the electorate of his party.

By strict interpretation of s 18C, it would appear as if the defendants would have won the day hands down, especially compounded by the stare decisis rule, as the Court of Appeal had considered this provision and had decided to submit to it.

Not to be outdone, counsel for the plaintiff submitted the case of *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Ors* [1980] 2 MLJ 165 merely for the purpose of making reference to the case of *Kannan & Anor v Menteri*

Buruh dan Tenaga Rakyat & Ors [1974] 1 MLJ 90. Even though his method was very much to be desired, there was no reason why I should not consider it. It would appear that in the referred case of *Kannan*, the applicants had been dismissed by their employers and after due inquiry that dismissal was confirmed by the Minister. His Lordship Syed Othman J (as he then was) was inclined to think that the better view of the law was that the court could not interfere with a decision by reason of an ouster clause, only if the decision was reached in accordance with the law. If the decision was not according to law, the court would invariably interfere with it on the basis that an illegal decision was no decision at all. This view too came about after his Lordship had considered the case of *Anisminic Ltd v Foreign Compensation Commission & Anor* [1969] 2 AC 147. However interesting that argument was, due to my earlier ruling, my conclusion therefore had to be geared to the statutory provision without making any reference to facts.

A distinguishing factor with regard to those relevant cases was that they had ouster clauses, whilst the constitution of the party had none. This certainly made my task easier. I could only conclude that as that political party did not oust the court from its premises — particularly in relation to an invalid decision (and endorsing valid and good decision) — it followed that courts could not be ousted. Even if there had been an ouster clause before, and an invalid decision had occurred, it would still not have ousted the court by virtue of *Anisminic Ltd.* Now we have a law that ousts the court openly. It is not a provision that prevents the court from interfering from within but rather from without. Surely this is the striking distinguishing factor.

According to Maxwell on *The Interpretation of Statutes*, a 'statute' has been defined simply as the will of legislature. At the opening pages of that book, the author expressed the view that:

> Granted that a document which is presented to it as a statute is an authentic expression of the legislative will, the function of a court is to interpret that document 'according to the intent of them that made it'. From that function the court may not resile: however ambiguous or difficult of application the words of an Act of Parliament may be, the court is bound to endeavour to place some meaning upon them.

In the case of *Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 69, Chang Min Tat FJ at pp 70–71 said:

> It may be apposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.
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> > 'It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed': per Bayley J in *R v Ramsgate (Inhabitants)* (1827) 6 B & C 712.

> We bear in mind the well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language (see *Maxwell on the Interpretation of Statutes* (11th Ed) at p 278), but this rule of law also means that where the language of an Act of Parliament clearly imposes a charge, then *the court fastened with the duty not merely to interpret that Act but also to apply the law must give expression to the will of Parliament.* (Emphasis added.)

Similarly, in the case of *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano* [1997] 1 MLJ 94, Gopal Sri Ram JCA at pp 100–101 said:

> The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. Prima facie, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases.

Section 18C cannot be read in isolation as, if courts are prevented from interfering then unhappy members will be left without any remedy or forums to air their grievances. Sections 16 and 40 perhaps may save the situation as the Registrar of Societies has been empowered to take over the role of the arbitrator if and when the need arises. He is now armed with powers to look into a dispute and thereafter take the necessary and consequential decisions, ie after having considered all the evidence necessary to resolve the dispute in question. After due consideration, perhaps it is at this stage that courts may come into the picture again and circumvent the statutory ouster provision as the decision is now pursuant to a decision from a local tribunal and not a political one, thus subjecting itself to administrative law.

With all these convincing arguments either posed by the defendants or interpreted by the court, and after a perusal of the relevant provisions, I had to conclude that that provision was very clear and unambiguous and brooked no other interpretation. I was also unable to acquiesce to the suggestion of the plaintiffs that invalid decisions do not come within the purview of s 18C whilst good ones were. To submit to that suggestion would reject the provision which in brief reads:

> The decision ... on any matter relating to the affairs of the party shall be final and ... shall not be challenged ... in any court on any ground ... regarding the validity of such decision.

As I had dismissed the application of the plaintiffs, it would accordingly mean that the application of the defendants had become academic and irrelevant. I accordingly dismissed also that application.

Applications dismissed.

Reported by Lew Chee Seong